

**NOTICE OF TELECONFERENCE  
ENFORCEMENT COMMITTEE MEETING**

**JANUARY 30, 2013**

**1:00 p.m.**

**2525 Natomas Park Drive, Suite 260  
Sacramento, CA 95833  
(916) 263-5355**

**Teleconference Locations with Public Access**

Dr. Francesco Columbu, D.C.  
2265 Westwood Blvd, Ste A  
Los Angeles, CA 90064  
(310) 234-1160

Dr. Sergio Azzolino, D.C.  
1545 Broadway St, Ste 1A  
San Francisco, CA 94109  
(415) 563-3800

Dr. Hugh Lubkin, D.C.  
9381 E. Stockton Blvd, Ste 220  
Elk Grove, CA 95624  
(916) 685-1718

**AGENDA**

1. **PUBLIC SESSION** – Call to Order & Establishment of a Quorum  
Sergio Azzolino, D.C., Chair  
Francesco Columbu, D.C.  
Hugh Lubkin, D.C.
2. **PUBLIC COMMENT**
3. **Approval of Minutes**  
August 30, 2012
4. **Disciplinary Guidelines**
5. **Adjournment**

**ENFORCEMENT COMMITTEE**

Sergio Azzolino, D.C., Chair  
Francesco Columbu, D.C.  
Hugh Lubkin, D.C.

***The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.***

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at [www.chiro.ca.gov](http://www.chiro.ca.gov).

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Board of Chiropractic Examiners  
2525 Natomas Park Drive, Suite 260  
Sacramento, California 95833-2931  
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**Board of Chiropractic Examiners  
MEETING MINUTES  
Enforcement Committee  
August 30, 2012  
2525 Natomas Park Drive, Suite 120  
Sacramento, CA 95833**

**Committee Members Present**

Hugh Lubkin, D.C., Chair  
Francesco Columbu, D.C.  
Sergio Azzolino, D.C.

**Staff Present**

Robert Puleo, Executive Officer  
Spencer Walker, Legal Counsel  
Sandra Walker, Compliance Manager  
Linda Shaw, Licensing/CE Manager  
Keith Powell, Supervising Special Investigator  
Chris Bell, Associate Governmental Program Analyst  
Dixie Van Allen, Associate Governmental Program Analyst  
Valerie James, Office Technician

**Call to Order**

Dr. Lubkin called the meeting to order at 10:00 a.m.

**Roll Call**

Dr. Columbu called the roll. All committee members were present.

The Committee moved to item 7 - Standards for Extracorporeal Shock Wave (ECSW) Therapy – Proposed New California Code of Regulations Section 318.2

**Standards for Extracorporeal Shock Wave (ECSW) Therapy – Proposed New California Code of Regulations Section 318.2**

Dr. Lubkin discussed the need for ECSW Therapy regulations in order to protect the public.

Ed Kremata, D.C. gave a presentation on ECSW Therapy and answered questions by the Committee members regarding its use within the chiropractic scope, training, contraindications and the specific device used in this therapy.

**MOTION: DR. COLUMBU MOVED TO POSTPONE THE RULEMAKING PACKAGE UNTIL IT IS DETERMINED THAT THIS THERAPY IS WITHIN THE SCOPE OF CHIROPRACTIC.**  
**SECOND: NONE**  
**MOTION FAILED**

**MOTION: DR. LUBKIN MOVED TO PRESENT THE RULEMAKING PACKAGE TO THE BOARD FOR APPROVAL WHILE THE BOARD'S LEGAL COUNSEL RESEARCHES WHETHER ECSW THERAPY IS WITHIN THE SCOPE OF CHIROPRACTIC.**  
**SECOND: DR. AZZOLINO SECONDED THE MOTION**

Derrick Anderson, D.C. requested that the Committee provide clarification between the low energy office unit and the higher energy unit used with anesthesia.

Spencer Walker, Legal Counsel, clarified that CCR section 302, scope of practice, does not distinguish between levels of ultrasound and so long as this therapy is determined to be ultrasound, further clarification is unnecessary.

**VOTE: 3-0**  
**MOTION CARRIED**

Robert Puleo requested that Dr. Columbu and Ed Kremata send any information they have regarding the device used for ECSW to him for further review.

#### **Approval of Minutes**

**DR. AZZOLINO MOVED TO APPROVE THE MINUTES OF THE JULY 14, 2012 ENFORCEMENT COMMITTEE MEETING.**  
**SECOND: DR. COLUMBU**  
**VOTE: 3-0**  
**MOTION CARRIED**

#### **Proposed Omnibus Consumer Protection Regulations**

##### **SECTION 303**

**DR. LUBKIN RECOMMENDED THE ADDITION OF THE PHRASE, "PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 27" TO THE END OF SUBDIVISION (B) AND CALLED FOR A VOTE.**  
**VOTE: 3-0**  
**RECOMMENDATION WAS ACCEPTED**

**DR. LUBKIN RECOMMENDED ADDING A COMMA AFTER THE WORD "CHANGE" IN THE SECOND LINE OF SUBDIVISION (C) AND DELETE SUBDIVISION (D).**

**VOTE: 3-0**

**RECOMMENDATION WAS ACCEPTED**

**SECTION 304**

**MOTION: DR. LUBKIN MOVED TO CHANGE SUBSECTION (A) TO STATE: "ANY DISCIPLINARY ACTION TAKEN AGAINST A LICENSEE BY ANOTHER LICENSING ENTITY OR AUTHORITY OF THIS STATE OR OF ANOTHER STATE OR AN AGENCY OF THE FEDERAL GOVERNMENT OR PROVINCE THEREOF, OR THE UNITED STATES MILITARY OR A FOREIGN GOVERNMENT OR ANY OTHER JURISDICTION SHALL CONSTITUTE UNPROFESSIONAL CONDUCT."**

**SECOND: DR. COLUMBU**

**VOTE: 3-0**

**MOTION CARRIED**

**SECTION 308**

**MOTION: DR. LUBKIN MOVED TO ACCEPT THE FOLLOWING PROPOSED CHANGES TO CCR SECTION 308:**

(a) Each person holding a license shall prominently display a ~~their~~ current active license in the entry area or waiting area of their principal place of business ~~a conspicuous place in the licensee's principal office or primary place of practice.~~

(b) Any licensed ~~D~~doctor of ~~C~~chiropractic with more than one place of practice shall obtain from the Board a Satellite Office Certificate for each additional place of practice. Said certificate must be renewed annually.

(c) A licensed ~~D~~doctor of ~~C~~chiropractic must prominently display in a conspicuous place a current active Satellite Office Certificate in the entry area or waiting area of at the office for which it was issued at all times while treating, examining or evaluating patients at that location.

(d) Notwithstanding subdivisions (b) and (c), any licensed doctor of chiropractic who is practicing in a mobile setting, such as at a health fair, a sporting event, or a patient's home, shall not be required to obtain and display a satellite certificate. However, any licensee practicing in such a mobile setting must at all times carry a current and active pocket license and shall make their pocket license available for inspection to a representative of the Board or any member of the public immediately upon request.

(e) No licensed ~~D~~doctor of ~~C~~chiropractic shall display any chiropractic license, certificate or registration, which is not currently active and valid.

**SECOND: DR. AZZOLINO**

**VOTE: 3-0**

**MOTION CARRIED**

## SECTION 312

The Committee Members had a lengthy discussion regarding the responsibilities of the chiropractor vs. the unlicensed individual regarding patient history, chief complaints and review with the patient.

Keith Powell, Board's Supervising Special Investigator, asked for clarification on whether the chiropractor would have to review the patient history face to face with the patient.

Dr. Lubkin clarified that the chiropractor is responsible for reviewing the patient history, but it does not have to occur face to face with the patient.

Sandra Walker, Board's Compliance Manager recommended adding "referrals" to the last sentence of subdivision (a).

Dr. Holloway, D.C. recommended that the definition of an unlicensed individual be moved to the beginning of section 312 as the first paragraph.

Dr. Holloway, D.C. recommends removing the phrase, "who generates", from proposed subdivision (e) to ensure that chiropractors are responsible for reviewing all unmarked radiographs, regardless of who took them.

### **MOTION: DR. LUBKIN MOVED TO ACCEPT THE FOLLOWING PROPOSED CHANGES TO CCR SECTION 312:**

~~Unlicensed individuals are not permitted to diagnose, analyze, or perform a chiropractic adjustment.~~ An "unlicensed individual" is defined as any person, including a student or graduate of a chiropractic institution, who does not hold a valid California chiropractic license. An exemption is hereby created for student doctors participating in board approved preceptorship programs.

The licensed doctor of chiropractic shall initially examine and prepare a written treatment plan for a patient prior to the provision of physiotherapy treatment. The unlicensed individual shall follow and provide only the treatment defined in the written plan.

(a) The permitted activities of unlicensed individuals are as follows:

(a1) Unlicensed individuals may take the history of a patient. However, this activity is separate from the consultation which at all times must be conducted by the licensed doctor. The licensed doctor of chiropractic must confirm the history with the patient and determine all appropriate evaluations, imaging, examinations and referrals.

(b2) Unlicensed individuals may conduct standard neurological, orthopedic, physical and chiropractic examinations at the direction of the licensed doctor of chiropractic, except they may not perform such examinations which require diagnostic or analytic interpretations nor may they. Unlicensed individuals may not render a conclusion either verbally or in writing to a patient regarding the patient's physical condition. As an example, unlicensed individuals may not perform evaluations of heart or lung soundings. Such individuals shall be at all times under the immediate and direct supervision of a licensed Doctor of Chiropractic.

~~"Immediate and d~~Direct supervision~~" means the licensed Ddoctor of Cchiropractic shall be at all times on the premises present in the same chiropractic facility where the examinations are being conducted. The licensed Ddoctor of Cchiropractic shall be responsible for the verification of the recorded findings and will be solely responsible for rendering a conclusion based on the findings.~~

(e3) ~~Unlicensed individuals may administer physical physiotherapy treatments as an adjunct to chiropractic adjustment, provided the physical physiotherapy treatment is conducted under the adequate indirect supervision of a licensed Ddoctor of Cchiropractic.~~

~~Adequate "Indirect supervision" means shall include all of the following:~~

~~(1) The licensed doctor of chiropractic shall be present in the same chiropractic facility with the unlicensed individual at least fifty percent of any work week or portion thereof the said individual is on duty unless this requirement has been waived by the board. The licensed doctor of chiropractic shall be readily available to the said individual at all other times for advice, assistance and instruction.~~

~~(2) The doctor shall initially examine and prepare a written treatment program for a patient prior to the providing of physical therapy treatment by the unlicensed individual.~~

~~(3) The doctor shall provide periodic reevaluation of the treatment program and of the individual's performance in relation to the patient. "Periodic reevaluation" shall mean at least once every thirty days the patient is under active care.~~

~~(4) The doctor shall perform and record an evaluation of the patient and his or her response to treatment at the termination thereof.~~

~~(d4) The licensed doctor of chiropractic is responsible for evaluating a radiographic image before any markings are added that obstruct portions of a body part. The licensed doctor of chiropractic may refer the evaluation of radiographic images to a radiologist. Following the licensed doctor of chiropractic's review of the radiograph, the Uunlicensed individuals may mark X-ray films administered generated by a licensed Ddoctor of Cchiropractic. "Marking X-rays" is defined as drawing and measuring between reference points and making angular and linear measurements. Unlicensed individuals are not permitted to make any diagnostic conclusions or chiropractic analytical listings, and tThe licensed doctor of chiropractic is responsible for any pathological entities covered or obstructed by the markings.~~

~~(eb) Unlicensed individuals may not; administer~~

~~(1) Generate X-rays unless they hold a valid X-ray technician certificate from the issued by the Department of Public Health Services, Radiologic Health Branch, or participate under the direct supervision of a licensed Ddoctor of Cchiropractic in a as part of a training program approved by that department and set forth in Section 25668.1 of the California Health and Safety Code. This prohibition, set forth in Section 30403 of Title 17 of the California Administrative Code includes the following activities:~~

~~(4A) Positioning of patient;~~

(2B) Setting up of X-ray machines;

(3C) Pushing a button to generate a radiographic beam;

(4D) Developing of films. However, Tthe Department of Public Health Services, Radiologic Health Branch has determined that unlicensed individuals may develop X-ray film if that is their sole radiologic responsibility.

(2) Unlicensed individuals are not permitted to diagnose, analyze, or perform a chiropractic adjustment. All preceptors must be under the direct supervision of a licensed doctor of chiropractic.

(c) Unlicensed individuals who exceed the permitted scope of practice set forth in this regulation shall be in violation of Section 15 of the Chiropractic Initiative Act and shall be prohibited from applying for a California chiropractic license for such time as may be determined by the board. Student doctors participating in board approved preceptorship programs are not to be considered "unlicensed individuals" when working in said program.

(d) A violation of this section shall constitute unprofessional conduct and may subject the licensee to disciplinary action.

**SECOND: DR. COLUMBU**

**VOTE: 3-0**

**MOTION CARRIED**

#### SECTION 317.2

**MOTION: DR. LUBKIN MOVED TO ACCEPT THE PROPOSED CHANGES TO SECTION 317.2 AS SHOWN IN THE HANDOUTS.**

**SECOND: DR. COLUMBU**

**VOTE: 3-0**

**MOTION CARRIED**

#### SECTION 317.3

**MOTION: DR. LUBKIN MOVED ELIMINATE THE PHRASE, "TAKEN BY ANOTHER LICENSING ENTITY OR AUTHORITY OF THIS STATE OR OF ANOTHER STATE OR AN AGENCY OF THE FEDERAL GOVERNMENT", FROM SUBSECTION (B) AS IT IS REDUNDANT WITH SECTION 304.**

**SECOND: DR. COLUMBU**

**VOTE: 3-0**

**MOTION CARRIED**

#### SECTION 384.1

The Committee Members discussed the removal of the fees from proposed section 384.1 and the necessity for this regulation at length.

Spencer Walker discussed the reasons for removal of the fees for petitioners from section 384.1 and recommended the deletion of proposed subsections (i) and (j).

**MOTION: DR. LUBKIN MOVED TO ELIMINATE THE PETITIONER FEES AND SUBDIVISIONS (I) AND (J) FROM SECTION 384.1.**

**SECOND: DR. COLUMBU**

**VOTE: 3-0**

**MOTION CARRIED**

### **Disciplinary Guidelines**

Sandra Walker and Chris Bell, Board's Probation Monitor, presented additional proposed revisions to Standard Conditions within the Disciplinary Guidelines and discussed the changes with the Committee Members and Legal Counsel at length. Due to restrictions on time, the Committee will continue the overview of the Optional Conditions at its next meeting.

### **Pain Management**

Dr. Lubkin discussed the issue of excessive treatment violations in relation to treatment of chronic pain so that our experts will have a guideline to follow.

Keith Powell discussed allegations of excessive treatment by insurance companies.

The Committee will table this agenda item until its next meeting.

### **Discipline by Another State – California Code of Regulations Section 304**

This section is currently included in the proposed Omnibus Consumer Protection Regulations. The Committee will continue this discussion at its next meeting.

### **Investigators: Authority to Inspect Premises – California Code of Regulations Section 306.3**

Committee Members discussed the problems relating to inspection of chiropractic offices with Keith Powell and Sandra Walker.

**MOTION: DR. AZZOLINO MOVED TO AMEND SECTION 306.3 BY ADDING A SECOND SENTENCE: "FAILURE BY A LICENSEE TO ALLOW SUCH AN INSPECTION SHALL BE CONSIDERED AS UNPROFESSIONAL CONDUCT."**

**SECOND: DR. COLUMBU**

**VOTE: 3-0**

**MOTION CARRIED**

### **Advertisements – California Code of Regulations Section 311**

The Committee will table this agenda item until its next meeting.



## **Law Violators – California Code of Regulations Section 314**

The Committee Members discussed the scope of this regulation and ramifications of enforcement with Spencer Walker.

### **MOTION: DR. LUBKIN MOVED TO AMEND SECTION 314 AS FOLLOWS:**

"It shall be the duty of every licensee to notify the Executive Officer or his or her designee of any violation of the act and statutes governing the practice of chiropractic, or these rules and regulations, in order that the board may take disciplinary action."

### **SECOND: DR. AZZOLINO**

**VOTE: 3-0**

**MOTION CARRIED**

### **Name of Corporation**

Dr. Azzolino discussed his concerns regarding conflict between the Business and Professions Code Section 1054 and California Code of Regulations Section 367.7.

### **MOTION: DR. AZZOLINO MOVED TO RECOMMEND REPEALING CCR SECTION 367.7 TO THE BOARD.**

**SECOND: DR. COLUMBU**

**VOTE: 3-0**

**MOTION CARRIED**

### **Policy/Procedure Regarding "Hold for Discussion" on Proposed Decisions and Stipulated Settlements**

Dr. Azzolino requested clarification on the procedures for "Hold for Discussion" on Proposed Decisions and Stipulated Settlements.

### **Disciplinary Orders – Monitoring of Billing Practices by Certified Public Accountants**

A discussion was held regarding the qualifications of a CPA to review chiropractic billing. The topic will be tabled until the next Enforcement Committee Meeting.

### **Disciplinary Orders – Timeframe for Taking and Passing Required Examinations (e.g. Ethics & Boundaries)**

The Committee Members discussed shortening the timeframe for which an examination should be completed for licensees who have been disciplined. The topic will be tabled until the next Enforcement Committee Meeting.

### **Public Comment**

No comments were brought forward.

### **Future Agenda Items**

No future agenda items were brought forward.

### **Adjournment**

Dr. Lubkin adjourned the meeting at 1:03 p.m.

# Disciplinary Guidelines

## Factors to Be Considered in Determining Penalties

Section 10(b) of the Chiropractic Act provides that the Board may discipline the holder of, or suspend or revoke, any license issued by the Board.

In determining whether the minimum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

1. ~~Actual or potential harm to the public~~ Actual, potential or threat of harm to the public
2. ~~Actual or potential harm to any consumer~~ Actual, potential or threat of harm to any consumer or patient
3. Prior disciplinary record including level of compliance with disciplinary order or probation terms
4. Prior warnings of record including final citations issued within the last 5 years
5. Number and/or variety of current violations
6. Nature and severity of the acts(s), offenses(s), or crime(s) under consideration
7. Mitigating evidence
8. Rehabilitation evidence
9. Compliance with terms of any criminal sentence or probation
10. Overall criminal record
11. Time passed since the act(s) or offenses occurred
12. Whether the conduct was intentional or negligent, demonstrated incompetence, or, if respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
13. The financial benefit to the respondent from the misconduct
14. Intent of Actions
15. Act(s) of remorse
16. Death of patient or consumer

No one of the above factors is required to justify the minimum and maximum penalty as opposed to an intermediate one.

## Terms of Probation

Probation conditions are divided into two categories: 1) standard conditions that shall appear in all probation cases, and 2) optional conditions that depend on the nature and circumstances of a particular case. The Board prefers that the optional conditions be placed before the standard conditions in sequence in the proposed disciplinary order.

## Disciplinary Guidelines (cont.)

The Board may also impose other conditions appropriate to the case as long as the condition is not contrary to public policy.

**Standard Conditions** - To be included in all probation decisions/orders.

1. Obey all laws
2. Quarterly reports
3. Probation monitoring
4. Interview with Board
5. Continuing education
6. Reimbursement of Board costs
7. Tolling of probation
8. No Preceptorships or Supervision of Interns
9. Violation of probation
10. Notification of employment
11. Notice to employers
12. Notice to employees
13. License surrender
14. Completion of probation

### **Optional Conditions**

1. Actual suspension
2. Drugs - Abstain from use
- ~~3. Drug abuse counseling/detoxification~~ **Drug and Alcohol Abuse Treatment/Counseling**
4. Alcohol - Abstain from use
- ~~5. Alcohol abuse counseling/detoxification~~
- ~~6. Blood and/or urine testing~~ **Drug and Alcohol Testing**
7. Law Examination
8. SPEC Examination
- ~~9. Monitoring Practice~~ **Monitoring by another Licensed Doctor of Chiropractic**
- ~~10. Auditing of billing practices~~ CPA
11. Restitution for consumers
12. Psychiatric or Psychological evaluation
13. Psychotherapy
14. Medical evaluation
- ~~15. Ethics Course~~ **Ethics and Boundaries Examination (NBCE)**
16. Education Course
17. Community service
18. Restricted practice
- ~~19. Third party presence sexual transgressors~~ **Third Party - Patient Chaperone**
20. Notification to patients
21. Criminal Probation/Parole Reports
22. **Billing Monitor**

### **Categories of Violations and Recommended Penalties**

The Chiropractic Initiative Act and the California Code of Regulations specify the offenses for which the Board may take disciplinary action. The following are categories of violations used by the Board in determining appropriate disciplinary penalties.

The Board also has the authority, pursuant to California Code of Regulations section 304, to impose discipline based on disciplinary action taken by another jurisdiction. The discipline imposed by the Board will typically correspond with the discipline imposed by the other jurisdiction for similar offenses.

### **CATEGORY I**

Minimum: Revocation stayed; 1-2 years probation

Maximum: Revocation

All standard terms and conditions.

Optional terms and conditions, as applicable

1. Actual suspension
2. Drugs - Abstain from use
3. ~~Drug abuse counseling/detoxification~~ **Drug and Alcohol Abuse Treatment/Counseling**
4. Alcohol - Abstain from use
5. ~~Alcohol abuse counseling/detoxification~~
6. ~~Blood and/or urine testing~~ **Drug and Alcohol Testing**
7. Law Examination
8. SPEC Examination
9. ~~Monitoring~~ **Practice Monitor**
10. ~~Auditing of billing practices~~ **CPA**
11. Restitution for consumers
12. Psychiatric or Psychological evaluation
13. Psychotherapy
14. Medical evaluation
15. ~~Ethics Course~~ **Ethics and Boundaries Examination (NBCE)**
16. Education Course
17. Community service
18. Restricted practice
19. ~~Third party presence—sexual transgressors~~ **Third Party – Patient Chaperone**
20. Notification to patients
21. Criminal Probation/Parole Reports
22. **Billing Monitor**

## Category I cont

**Recommended but not limited to for** the following violations which are relatively minor, ~~but are~~ potentially harmful, or ~~for~~ repeated violations of a relatively minor nature:

### *Chiropractic Initiative Act*

5 Practicing without a valid license

10(b) Improper use of fictitious names

### *California Code of Regulations*

#### **302.5 Use of Laser**

303 Practicing without notifying Board of business address      **Filing of Address**

#### **304 Discipline by Another Jurisdiction**

308 ~~Practicing without properly posting license; failure to obtain and post satellite office~~

~~Certificate~~      **Display of License**

310 Change of name

310.2 Use of the title "Chiropractor" by unlicensed persons

#### **311 Advertising**

312 Unlicensed practice (*for use in less egregious cases or for applicants*)

#### **314 Law Violators**

317(v) Waiving co-payments or deductibles

317(x) Substitution of a spinal manipulation for vaccination

#### **317.2 Gag Clauses in Civil Agreements Prohibited**

#### **317.3 Licensee Reporting Requirements**

#### **318 (a)(b)Chiropractic Patient Records/Accountable Billings**

#### **319.1 Informed Consent**

#### **366 Continuing Education Audits**

367.5 Application for chiropractic corporation

367.7 Name of corporation

367.9 Shares: ownership and transfer

### *Business and Professions Code*

1051 Application for registration as a chiropractic corporation

### *Health and Safety Code*

123110 Failure to provide ~~treatment~~ patient records

## **CATEGORY II**

Minimum: Revocation stayed, 3 years probation

Maximum: Revocation

All standard terms and conditions of probation

Optional terms and conditions, as applicable

1. Actual suspension
2. Drugs - Abstain from use
3. ~~Drug abuse counseling/detoxification~~ **Drug and Alcohol Abuse Treatment/Counseling**
4. Alcohol - Abstain from use
5. ~~Alcohol abuse counseling/detoxification~~
6. ~~Blood and/or urine testing~~ **Drug and Alcohol Testing**
7. Law Examination
8. SPEC Examination
9. ~~Monitoring~~ **Practice Monitor**
10. ~~Auditing of billing practices~~ **CPA**
11. Restitution for consumers
12. Psychiatric or Psychological evaluation
13. Psychotherapy
14. Medical evaluation
15. ~~Ethics Course~~ **Ethics and Boundaries Examination (NBCE)**
16. Education Course
17. Community service
18. Restricted practice
19. ~~Third party presence—sexual transgressors~~ **Third Party – Patient Chaperone**
20. Notification to patients
21. Criminal Probation/Parole Reports
22. **Billing Monitor**

**Category II cont.**

Recommended for violations with a more serious potential for harm, for violations which involve greater disregard for chiropractic law and public safety, or for violations which reflect on ethics, care exercised or competence.

*Chiropractic Initiative Act*

10(b) Advertising treatment of sexual disorders

15 Misleading use of title

*California Code of Regulations*

306.1(c) Failure to appear for hearing

311 Advertising

312 Unlicensed practice (*for use in more egregious cases*)

**314 Law Violators**

317(l) Making or signing false documents

317(n) Making false statement on the license application

317(p) False, misleading, or deceptive advertising

317(r) Unauthorized disclosure of patient information; failure to maintain confidentiality

317.1 Failure to register referral service

318(a) Chiropractic patient records

318(b) Accountable billings

319 Inappropriate billing for services advertised as free or discounted

**319.1 Informed Consent**

~~355 Renewal and Restoration~~

**366 Continuing Education Audits**

*Business and Professions Code*

650.3 Group advertising and referral services

651 False, misleading, or deceptive advertising



### **CATEGORY III**

Minimum: Revocation stayed, minimum 30 days suspension, 5 years probation

Maximum: Revocation

All standard terms and conditions of probation

Optional terms and conditions, as applicable

1. Actual suspension
2. Drugs - Abstain from use
3. ~~Drug abuse counseling/detoxification~~ **Drug and Alcohol Abuse Treatment/Counseling**
4. Alcohol - Abstain from use
5. ~~Alcohol abuse counseling/detoxification~~
6. ~~Blood and/or urine testing~~ **Drug and Alcohol Testing**
7. Law Examination
8. SPEC Examination
9. ~~Monitoring~~ **Practice Monitor**
10. ~~Auditing of billing practices~~ **CPA**
11. Restitution for consumers
12. Psychiatric or Psychological evaluation
13. Psychotherapy
14. Medical evaluation
15. ~~Ethics Course~~ **Ethics and Boundaries Examination (NBCE)**
16. Education Course
17. Community service
18. Restricted practice
19. ~~Third party presence—sexual transgressors~~ **Third Party – Patient Chaperone**
20. Notification to patients
21. Criminal Probation/Parole Reports
22. **Billing Monitor**

### Category III cont.

Recommended for less egregious criminal convictions involving moral turpitude, sexual misconduct or fraudulent acts committed in connection with the licensee's practice. Also to be used in cases involving gross negligence/incompetence, capping, steering, accepting fees for patient referrals, excessive treatment or for failure to refer a patient to another licensed care provider.

#### *Chiropractic Initiative Act*

7 Unauthorized practice of medicine

#### *California Code of Regulations*

302(a) Practice exceeding the scope of practice

302(a)(5) Use of drug or medicine in materia medica

#### **302.5 Use of Laser**

312(c) Failure to properly supervise

313 Inducing student to practice chiropractic

#### **314 Law Violators**

316(a) Responsibility for conduct on premises (*for use in less egregious cases*)

316(b) License used in connection with sexual acts (*for use in less egregious cases*)

316(c) Sexual relations with a patient (*for use in less egregious cases*)

317(a) Gross negligence (*for use in less egregious cases*)

317(b) Repeated negligent acts (*for use in less egregious cases*)

317(d) Excessive treatment (*for use in less egregious cases*)

317(e) Intentionally or recklessly causing harm to the public

317(f) Administering or use of drugs or alcohol

317(g) Conviction of a crime (*for use in less egregious cases, including fraud*)

317(h) Conviction involving moral turpitude, dishonesty, or corruption (*for use in less egregious cases, excluding fraud*)

317(i) Conviction involving dangerous drugs or alcohol

317(j) Dispensing or administration of drugs

317(k) Commission of dishonest or fraudulent act related to duties or functions of license

317(m) Aiding and abetting unlicensed activity

317(q) Obtaining fee by fraud or deceit

317(s) Use of cappers or steerers

317(t) Fee for referrals

317(w) Failure to refer a patient to other licensed health care provider

#### **318.1 Standard of Care Regarding Manipulation Under Anesthesia (MUA)**

#### *Business and Professions Code*

1054 Name of a chiropractic corporation

1055 Officers of chiropractic corporation not licensed as required in Professional Corporation Act

725 Excessive prescribing or treatment (*for use in less egregious cases*)

726 Sexual relations with patients (*for use in less egregious cases*)

810 False or fraudulent claims (*for use in less egregious cases*)

## **CATEGORY IV**

### **Penalty: Revocation**

Recommended for **more egregious** cases including, but not limited to, fraudulent activity, physical violence, sexual misconduct, excessive treatment, or improper use of license in connection with sexual acts. Revocation is also recommended when: 1) respondent fails to file a notice of defense or to appear at a disciplinary hearing where the Board has requested revocation in the accusation; 2) respondent violates the terms and conditions of probation from a previous disciplinary order; and 3) where prior discipline has been imposed, as progressive discipline unless respondent can demonstrate satisfactory evidence of rehabilitation.

### *California Code of Regulations*

#### **302.5 Use of Laser**

316(a) Responsibility for conduct on premises

316(b) License used in connection with sexual acts

316(c) Sexual relations with a patient

317(a) Gross negligence

317(b) Repeated negligent acts

317(d) Excessive treatment

317(g) Conviction of a crime

317(h) Conviction involving moral turpitude, dishonesty, or corruption

**318.1 Standard of Care Regarding Manipulation Under Anesthesia (MUA)**

**390.7 Sexual Contact With Patient**

**390.8 Required Actions Against Registered Sex Offenders**

### *Business and Professions Code*

725 Excessive prescribing or treatment

726 Sexual relations with patients

810 False or fraudulent claims

## **DISCIPLINARY ORDERS – TERMS AND CONDITIONS**

1/30/2013 Meeting Copy – 8/30/2012 proposed edits made

### **STANDARD CONDITIONS**

#### **Obey All Laws**

Respondent shall obey all federal, state and local laws, and all statutes and regulations governing the practice of chiropractic in California. A full and detailed account of any and all arrests and or convictions for any violations of law shall be reported by the Respondent to the Board in writing within 72 hours of occurrence. To permit monitoring of compliance with this term and within 45 days of the effective date of this decision, unless previously submitted as part of the licensure application process Respondent shall submit to the Department of Justice electronic fingerprint images (Live Scan) and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a state or federal criminal record. ~~completed fingerprint cards and fingerprint fees.~~ Respondent shall submit a recent 2" x 2" photograph of himself or herself within 45 days of the effective date of ~~the final~~ this decision.

**RATIONALE:** See Regulation 321.1 fingerprint submission language; “or who are directed by the board shall successfully complete a state and federal level criminal offender record information search conducted through the Department of Justice”. With this condition the Board will be alerted of any criminal law violations by the probationer especially any such occurrences following the start of probation and whether or not the probationer has informed the Board's probation monitor or designee of these arrests.

#### **Quarterly Reports**

Respondent shall submit quarterly reports under penalty of perjury on a form entitled “Quarterly Probation Report” (No. QPR100 (Rev. 7/04)), certifying and documenting whether there has been compliance with all conditions of probation. ~~If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made.~~ Late or missing reports may be regarded as a violation of probation.

**RATIONALE:** This provides the Board with a mechanism for maintaining communication with the Respondent. Late reports or missing reports would be seen as violations, and this enforcement tool could not be utilized in the past because mention of it was missing from term language.

#### **Probation Monitoring**

Respondent shall comply with the Board's probation compliance monitoring program, **investigator visits and site inspections**. Failure to comply with probation monitoring shall be considered a violation of probation.

**RATIONALE:** This language includes the investigations unit interacting with probationers as the request of or in coordination with the probation monitor or designee.

### Interview with Board

Respondent shall appear in person for interviews with the Board's enforcement staff, the full Board, or its designee upon request at various intervals and with reasonable notice.

### Continuing Education

Respondent shall provide evidence of continuing education, required for license renewal, if requested by the Board.

### Reimbursement of Board Costs

Respondent shall reimburse to the Board its costs of investigation and enforcement in the amount of \$ \_\_\_\_\_. Respondent may be permitted to pay these costs in a payment plan determined by the Board/designee or as determined in this order. Respondent shall make said payments as follows: \_\_\_\_\_. If Respondent fails to pay the costs as directed by the Board and on the date(s) determined by the Board, probation shall be automatically extended until such time that all costs are paid in full. Non-payment, by the dates and in the amounts determined by the Board, will be considered a violation of probation. The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to reimburse the Board. If Respondent is in default of his responsibility to reimburse the Board, the Board will collect cost recovery from the Franchise Tax Board, the Internal Revenue Service or by any other means of attachment of earned wages legally available to the Board.

**RATIONALE:** The Board's designee (probation monitor) arranges for and monitors receipt of payments from probationers. Many have payment plans when it is specified in their order. This additional language allows Board's designee to review and consider written requests from probationer or to make or modify payment plan arrangements, if payments are not already specified in their order. Furthermore, this additional language provides the Board with support to collect any unpaid costs through appropriate tax agencies from non-compliant Respondents who have filed for Bankruptcy and/or will not pay.

### Tolling of Probation

If Respondent leaves California to reside or practice outside this state, or for any reason should Respondent stop practicing chiropractic in California, Respondent must notify the Board in writing of the dates of departure and return or the dates of non-practice within 10 days of departure or return. Non-practice is defined as any period of time exceeding 30 days in which Respondent is not engaging in the practice of chiropractic or any time the license is inactive or in forfeiture status. Periods of temporary residency or practice outside the state or of non-practice within the state shall not apply to reduction of the probationary period. It shall be a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding a total, combined total or consecutive period of [ six ] months or [ one, two or three ] \_\_\_\_\_ years.

**RATIONALE:** Per legal, we cannot actively impose or enforce specific terms on Probationers while they are tolling, only reasonably can we enforce that they report any change of address per regulation and that they know about the obey all laws term in the probation order. The other aspects of the additional language changed simply allows probation to be completed in a reasonable time by lessening the likelihood of lengthy probation and also encourages an effective active probation program. Also, it is more effective to reduce or limit tolling time to 6 months for 1 year terms, 1 year maximum for 2 year term, or 2 years maximum for 3-5 year term. "Consecutive period" was removed to avoid probationers tolling up to their limit, returning for a day in CA to practice and then return again to tolling status for another \_\_\_\_\_ years.

### **No Preceptorships or Supervision of Interns**

Respondent shall not supervise any chiropractic student (intern) participating in a preceptor program or any unlicensed chiropractic graduate and shall not perform any of the duties of a preceptor.

### **Violation of Probation**

If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation **and/or** Petition to Revoke Probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended until all terms and conditions have been met or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

**RATIONALE:** Paragraph flows better with use additional word for emphasis.

### **Notification of Employment**

Within 10 days of a change in **chiropractic** employment -- either leaving or commencing **chiropractic** employment -- Respondent shall so notify the Board in writing, including the **name, address, phone number and license number** of the new employer.

**"Chiropractic Employment"** within the meaning of this provision shall include any full-time, part-time, **independent contracting** or temporary service as a chiropractor.

**RATIONALE:** Use of this additional language ensures that the new employment is specific to chiropractic and also includes independent contract work.

### **Notice to Employers**

Respondent shall notify all present and prospective employers of the Accusation or Statement of Issues and decision and Order in case No. \_\_\_\_\_.

Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new **chiropractic** employment, Respondent shall cause his/her employer to report to the Board in writing acknowledging the employer has read the **Accusation or Statement of issues and the decision** in case No. \_\_\_\_\_.

**Chiropractic Employment"** within the meaning of this provision shall include any full-time, part-time, **independent contracting** or temporary service as a chiropractor.

**RATIONALE:** Use of this additional language ensures that the new employer has been notified of all aspects of the probation. It also clarifies that only chiropractic employment needs to be reported to the Board. Independent contract work is also captured as employment – **Also words And/The crossed out.**

### Notice to Employees

Respondent shall, upon or before the effective date of this decision, ensure that all employees involved in chiropractic operations are made aware of all the terms and conditions of probation, either by posting **the Decision and Order** ~~a notice of the conditions of the terms and conditions~~, circulating **the Decision and Order** ~~such notice~~, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout probation. Respondent shall ensure that any employees hired or used after the effective date of this decision are **also** made aware of all the terms and conditions **of probation** ~~by posting a notice, circulating a notice, or both.~~ "Employees" as used in this provision includes all full-time, part-time, temporary and independent contractors employed or hired at any time during probation. Respondent shall, if requested, provide proof to the Board or its designee that all employees are aware of the decision in case No. \_\_\_\_\_ since its effective date.

**RATIONALE: Paragraph flows better with use additional words for emphasis.**

### License Surrender

Following the effective date of this decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may voluntarily tender his/her license to the Board. The Board reserves the right to evaluate the Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the terms and conditions of probation. Respondent shall relinquish his/her wall license and pocket renewal license to the Board or its designee within 10 days from the date of acceptance. **Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board.**

Respondent may not petition the Board for reinstatement of his/her surrendered license for ~~2 years~~ **\_\_\_\_ years** from the acceptance date of surrender. If Respondent owes any outstanding costs associated with the investigation and enforcement of this disciplinary action the outstanding amount shall be paid in full **within \_\_\_\_ days of the effective date of this decision** ~~at the time the petition is submitted to the Board.~~

**RATIONALE: This condition change permits the Board to determine the appropriate length of time the Respondent should wait to or can petition for reinstatement of license.**

### Completion of Probation

Upon successful completion of probation, Respondent's license will be fully restored.

**DISCIPLINARY ORDERS –  
TERMS AND CONDITIONS**

**1/30/2013 Meeting Copy – 8/30/2012 proposed edits made**

**OPTIONAL CONDITIONS**

**Actual Suspension**

As part of probation, Respondent is suspended from the practice of chiropractic for ( Ex. 30 days) beginning the effective date of this decision. The suspension notice shall remain posted, at Respondent's **primary practice and/or all satellite practice addresses** during the entire period of actual suspension. Respondent shall prominently post all suspension notices provided by the Board **at for these locations and also ensure such notices are posted in a place which is both** conspicuous and readable to the public; ~~(Ex: near entrance to Respondent's primary practice and/or satellite location entrance practice addresses.~~

Respondent shall not, directly or indirectly, engage in any conduct or make any statement which is intended to mislead or is likely to have the effect of misleading any patient, member of the public, or other person as to the nature of and reason for the suspension.

During suspension, Respondent shall not enter any chiropractic practice. Respondent shall not direct or control any aspect of the practice of chiropractic. Subject to the above restrictions, Respondent may continue to own or hold an interest in the chiropractic practice in which he or she holds an interest at the time this decision becomes effective.

**Failure to post suspension notice as required by this Order may be regarded as a violation of probation. Failure to post the suspension notice(s) provided by the Board will not apply to Respondent's suspension time as designated in this Order and the suspension will remain in effect until there is successful compliance by Respondent in completing the required number of days of suspension.**

**RATIONALE:** This change includes suspension posting at both Satellite and practice addresses, near entrances. The added language covers chiropractors who practice at home. The word "both" is also included so there is no doubt where to put a posted suspension notice. It is assumed that probation conditions are still in effect even during Respondent's suspension period.

**Drugs - Abstain From Use**

Respondent shall abstain from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by Section 4022 of the Business and Professions Code, unless prescribed by a medical practitioner for a bona fide illness.



#### Alcohol and Drug Abuse Treatment/Counseling

Within 30 days from the effective date of this Decision, Respondent shall propose to the Board, for prior approval, the name of one or more inpatient or outpatient alcohol and drug abuse recovery programs which at a minimum is six (6) months in duration. Within 30 days after notification of the Board's approval of such program, Respondent must enroll in the approved program. Non-completion of said program shall constitute a violation of probation by Respondent. Subsequent to the completion of the program, Respondent shall participate in on-going treatment such as receiving individual and/or group therapy from a psychologist trained in alcohol and drug abuse treatment; and/or attend Twelve Step meetings or the equivalent as approved by the Board at least 3 times a week during the first \_\_\_\_\_ of probation. Respondent shall submit proof satisfactory to the Board of attendance in said programs. The costs for participation in the programs shall be borne by the Respondent. Respondent shall sign a Release of Information allowing the programs to release to the Board all information the Board deems relevant.

**RATIONALE:** This condition is NEW. It replaces and combines the current and separate alcohol and drug rehabilitation program requirement. The language addition is more specific to time frames required for treatment and allows the Board the option to specify the length of treatment.

#### Drug Abuse Counseling/Detoxification

NOTE-Replaced by Alcohol and Drug Abuse Treatment/Counseling

#### Alcohol - Abstain From Use

Respondent shall abstain from the use of any alcoholic product or beverage.

**RATIONALE:** Adding this word allows us to detect if testing results on a probationer included consumption alcoholic beverages ~~but also use of~~ or products not limited to such as: Nyquil, mouth wash or hand sanitizer.

#### Alcohol Abuse Counseling/Detoxification

NOTE-Replaced by Alcohol and Drug Abuse Treatment/Counseling

#### Blood and/or Urine Testing Drug and Alcohol Testing

Upon the request of the Board or its designee, Respondent shall immediately submit, with or without prior notice, to ~~observed blood, urine, hair, breath, saliva or any other mode of testing and location as determined by the Board,~~ at Respondent's expense. Any confirmed positive finding will be considered a violation of this term. Any attempts by Respondent to circumvent the requirements of this term shall also be considered a violation of this term. This includes, but is not limited to, Respondent's failure to submit a testable sample or his or her use of any device designated to fraudulently defeat drug tests. If the Board files a petition to revoke probation or an accusation, the Board may suspend Respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period. All terms and conditions remain in effect during the period of suspension.

**RATIONALE:** Allows for sound frequently monitored/random substance testing program if we use additional industry specimen screening tests besides blood and urine. This is currently compatible with DCA's contract for same services on probationer substance testing. As well, the probation

monitor requesting random tests will be able to get testing feedback immediately if any probationer was caught being dishonest or adulterating the testing sample or its validity for the process.

### Law Examination

Respondent shall take and pass the **California Law and Professional Practice Examination (CLPPE)** within the first \_\_\_\_\_ years of probation. ~~If Respondent is directed to take an examination currently required of new applicants for licensure as a chiropractor, the examination shall be taken on a regularly scheduled date. If Respondent fails this examination, Respondent must take and pass a re-examination.~~

**Option #1:** If Respondent fails the first examination, Respondent shall cease the practice of chiropractic until the examination has been passed, as evidenced by the written notice to Respondent from the Board.

**Option #2:** Respondent shall not practice chiropractic until Respondent has passed the required examination and has been so notified by the Board in writing.

The Respondent shall pay the cost of the examination and any subsequent re-examinations at the examination fee currently in place. Failure to pass the **CLPPE** a required examination within the first \_\_\_\_\_ years of probation prior to the termination date of probation shall constitute a violation of probation. ~~and automatically extend the period of probation.~~

**RATIONALE:** Crossed out text makes less wordy, additional words make term easier to follow provision. Option 1 is recommended in cases where the Respondent has been found to be incompetent or repeatedly negligent. Option 2 is recommended in cases where Respondent has been found to be incompetent or grossly negligent and patient/client injury has resulted. The term does not have to have both or either Option.

### Special Purposes Examination for Chiropractic (SPEC)

Respondent shall take and pass the SPEC examination administered by the National Board of Chiropractic Examiners (NBCE) within the first ~~two~~ \_\_\_\_\_ years of probation. If Respondent fails this examination, Respondent must take and pass a re-examination. Respondent is responsible to provide proof to the Board of successful completion of this examination. Respondent shall pay the cost of the examination and any subsequent re-examinations at the examination fee set by the NBCE. Failure to pass the SPEC examination after two attempts constitutes a violation of probation.

**RATIONALE:** This update allows for the appropriate deadline to be selected for the case, depending on the nature of it.

**Monitoring Practice Monitor by Another Licensed Doctor of Chiropractor**

Within 30 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a plan of practice in which Respondent's practice shall be monitored by another doctor of chiropractic. The practice monitor who shall submit written reports to the Board **for Respondent, on a form designated by the Board**, on a quarterly basis. **It is Respondent's responsibility to ensure their practice monitor has copies of the Accusation in this matter along with the Decision and Order for reference.** Respondent must also assure that the required reports **from the practice monitor** are filed in a timely fashion. The monitor shall be independent, with no prior professional or personal relationship with Respondent. The monitoring shall be, as required by the Board, either: Continuous - 75% to 100% of a work week; Substantial - At least 50% of a work week; Partial - At least 25% of a work week; or Daily Review - **Supervisor's Monitor's** review of probationer's daily activities within 24 hours. If the monitor resigns or Respondent changes employment Respondent shall, within 15 days, submit the name of new monitor, **for pre-approval**. If Respondent changes employment, Respondent shall have his or her new monitor, within 15 days after employment commences, submit notification to the Board in writing stating they have read the decision in case number \_\_\_\_\_ and is familiar with the level of supervision **monitoring** as determined by the Board. Any costs for such monitoring shall be paid by Respondent.

**Option #1:** Respondent is prohibited from engaging in solo practice.

~~Option #2: Respondent shall be prohibited from unilaterally signing insurance and worker's compensation insurance claim documents. All insurance and workers' compensation insurance claim forms are to be co-signed by a licensed chiropractor approved by the Board. NOTE: Recommended in cases of insurance and worker's compensation insurance fraud.~~

**RATIONALE: This term makes attempt to ensure that Respondent's practice management is adequately supervised. Cases worthy of this level of monitoring include those with violations for incompetence, negligence, patient injury or unprofessional conduct. A form will be used by practice monitor to report findings and observations to the Board. A practice monitor can also check for billing and fiscal inaccuracies against Respondent's recordkeeping. We recommend use of Option 1 above when a practice monitor, as outlined in this Section, will be used.**

**Of Additional Note: Although Option 2 language is shown crossed out above (and moved to the Billing Monitor Section) it can be used as an additional requirement here for cases which require stronger enforcement and monitoring. The Cosigning Requirement states: Respondent shall be prohibited from unilaterally signing insurance and worker's compensation insurance claim documents. All insurance and workers' compensation insurance claim forms are to be co-signed by a licensed chiropractor approved by the Board.**

### **Auditing of Billing Practices CPA**

Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of a licensed certified public accountant (CPA) in this state, and a plan by which such CPA would monitor Respondent's billing practices. The CPA shall be independent, with no present or prior business, professional, or personal financial relationship with Respondent. The CPA approved by the Board shall submit written reports to the Board on a quarterly basis verifying that monitoring has taken place as required. It shall be Respondent's responsibility to ensure that the required reports are filed in a timely fashion. Respondent shall give the CPA access to Respondent's fiscal records. Monitoring shall consist of at least 4 hours per quarter of review of Respondent's fiscal records. After two quarters, if the CPA determines that less time is sufficient for compliance, the Respondent may request Board approval of a reduction of the number of hours of review. If ever the CPA prepares a quarterly report to the Board which finds substantial errors or omissions in, or questionable billing practices, monitoring may be increased at the discretion of the Board and Respondent shall comply therewith. All costs of monitoring shall be borne by Respondent. If at any time during the period of probation, the CPA quits or is otherwise unavailable to perform his/her monitoring duties, within 30 days of the same, Respondent shall submit to the Board, for its prior approval, the name and qualifications of a licensed CPA in this state and a plan by which such CPA would monitor Respondent's billing practices.

**Option #1:** Within 45 days of the effective date of this decision and on a quarterly basis thereafter and at Respondent's expense, Respondent shall obtain a review of the books and records of Respondent's chiropractic practice by a certified public accountant licensed in good standing in this state approved by the Board. Said certified public accountant shall review the books and records of Respondent's chiropractic practice to determine whether Respondent has delivered, received or accepted any rebate, refund, commission, preference, patronage, dividend, discount or other consideration, whether in the form of money or otherwise, as compensation or inducement for the referral of patients, clients or customers to him/her or his/her practice or by him/her. Within 10 days of the completion of each review, said certified public accountant shall complete and submit a written report of his/her review to the Board. Respondent shall be responsible for the completion and submission of each said report. Failure to comply with this condition shall be considered a violation of probation.

NOTE: Recommended in cases involving insurance fraud, capping, steering, or fees for patient referrals.

**RATIONALE:** Insurance fraud was added since many probationers during their term are generally required to have patient billings reviewed by a licensed CPA hence CPA has been commonly used already in header of this paragraph term.

### **Restitution for Consumers**

Within \_\_\_\_\_ from the effective date of this decision, Respondent shall pay to \_\_\_\_\_ the amount of \$ \_\_\_\_\_. If Respondent fails to pay the restitution as directed by the Board and on the date(s) determined by the Board it shall be a violation of probation. Respondent shall provide proof to the Board of restitution.

**RATIONALE:** Fraud or negligent action usually deems this term. Careful review is made to ensure that proper restitution is made to timely either the patient or any other applicable entity. Restitution may be made within a specific time frame or on a payment schedule. Restitution should cover those amounts that are a direct result of the actions of Respondent.

### **Psychiatric or Psychological Evaluation**

Within 30 days of the effective date of this decision, and on a periodic basis as may be required by the Board or its designee, Respondent shall undergo, at his/her own expense, psychiatric evaluation by a Board-appointed or Board-approved psychiatrist or psychotherapist. Respondent shall sign a release which authorizes the evaluator to furnish the Board a current diagnosis and written report regarding the Respondent's judgment and ability to function independently as a chiropractor with safety to public and whatever other information the Board deems relevant to the case. The completed evaluation is the sole property of the Board. **It is Respondent's responsibility to ensure their therapist has copies of the Accusation in this matter along with the Decision and Order for reference.**

If the psychiatrist or psychotherapist recommends and the Board or its designee directs Respondent to undergo psychotherapy, Respondent shall, within 30 days of written notice of the need for psychotherapy, submit to the Board or its designee for its prior approval, the recommended program for ongoing psychotherapeutic care. Respondent shall undergo and continue psychotherapy, at Respondent's own expense, until further notice from the Board. Respondent shall have the treating psychotherapist submit quarterly reports to the Board, or its designee. If recommended by the psychiatrist or psychotherapist and approved by the Board or its designee, Respondent shall be barred from practicing chiropractic until the treating psychotherapist recommends, in writing and stating the basis thereof, that Respondent can safely practice chiropractic, and the Board approves said recommendation.

During suspension, Respondent shall not enter any chiropractic practice. Respondent shall not direct or control any aspect of the practice of chiropractic. Subject to the above restrictions, Respondent may continue to own or hold an interest in any chiropractic practice in which he or she holds an interest during the period of suspension.

**(Optional)** Commencing on the effective date of this decision, Respondent shall not engage in the practice of chiropractic until notified in writing by the Board or its designee that Respondent is psychologically fit to practice chiropractic.

NOTE: Strongly recommended for those cases where evidence demonstrates that mental illness or disability was a contributing cause of the violation.

**RATIONALE: We added that Respondent to give his/her therapist a copy of Order and Accusation.**

### **Psychotherapy**

Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of a psychotherapist or licensed mental health practitioner of Respondent's choice. Should Respondent, for any reason, cease treatment with the approved psychotherapist or licensed mental health practitioner, Respondent shall notify the Board immediately and, within 30 days of ceasing treatment, submit the name of a replacement psychotherapist or licensed mental health practitioner of Respondent's choice to the Board for its prior approval. **It is Respondent's responsibility to ensure their therapist has copies of the Accusation in this matter along with the Decision and Order for reference.**

Upon approval of the psychotherapist or licensed mental health practitioner, Respondent shall undergo and continue treatment, with that therapist and at Respondent's expense, until the Board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the Board. The Board may require Respondent to undergo psychiatric evaluations by a Board-appointed or Board-approved psychiatrist or psychotherapist. If recommended by the psychotherapist or licensed mental health practitioner and approved by the Board or its designee, Respondent shall be barred from practicing chiropractic until the treating psychotherapist or licensed mental health practitioner recommends, in writing and stating the basis thereof, that Respondent can safely practice chiropractic, and the Board approves said recommendation.

During suspension, Respondent shall not enter any chiropractic practice. Respondent shall not direct or control any aspect of the practice of chiropractic. Subject to the above restrictions, Respondent may continue to own or hold an interest in any chiropractic practice in which he or she holds an interest during the period of suspension.

NOTE: Appropriate for those cases where evidence demonstrates sexual misconduct or commission of an act punishable as a sexual crime. Also appropriate in cases where evidence demonstrates impairment (Ex: mental illness, alcohol and/or drug abuse)

**RATIONALE:** This additional comment could be helpful to assign this term, if appropriate or emphasis in certain cases. **We also added that Respondent to give his/her therapist a copy of Order and Accusation.**

### **Medical Evaluation**

Within 60 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation, at Respondent's expense, by a Board-appointed or Board-approved physician who shall furnish a medical report to the Board or its designee. If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall, within 30 days of written notice from the Board, submit to the Board for its prior approval, the name and qualifications of a physician of Respondent's choice. Upon Board approval of the treating physician, Respondent shall undergo and continue medical treatment, with that physician and at Respondent's expense, until further notice from the Board. Respondent shall have the treating physician submit quarterly reports to the Board. Should Respondent, for any reason, cease treatment with the approved physician, Respondent shall notify the Board immediately and, within 30 days of ceasing treatment, submit the name of a replacement physician of Respondent's choice to the Board for its prior approval.

If recommended by the physician and approved by the Board or its designee, Respondent shall be barred from practicing chiropractic until the treating physician recommends, in writing and stating the basis thereof, that Respondent can safely practice chiropractic, and the Board approves said recommendation.

During suspension, Respondent shall not enter any chiropractic practice. Respondent shall not direct or control any aspect of the practice of chiropractic. Subject to the above restrictions, Respondent may continue to own or hold an interest in any chiropractic practice in which he or she holds an interest during the period of suspension.

**(Optional)** Upon the effective date of this decision, Respondent shall not engage in the practice of chiropractic until notified in writing by the Board of its determination that Respondent is medically fit to practice safely.

NOTE: Appropriate for those cases where the evidence demonstrates that the Respondent has had a physical problem/disability which was a contributing cause of the violation(s) and which may affect the Respondent's ability to practice.

### **Ethics Course**

~~Within 60 days of the effective date of this decision, Respondent shall enroll in a course in Ethics approved in advance by the Board, and shall successfully complete the course during the first year of probation. Class room attendance is specifically required. Probation shall be automatically extended for failure to complete the education as set out hereinabove.~~

### **Ethics and Boundaries Examination (NBCE)**

Respondent shall take and pass the Ethics and Boundaries examination administered by the National Board of Chiropractic Examiners (NBCE) within the first \_\_\_\_ months / \_\_\_\_ years of probation. If Respondent fails this examination, Respondent must take and pass a re-examination. Respondent is responsible to provide proof to the Board of successful completion of this examination. Respondent shall pay the cost of the examination and any subsequent re-examinations at the examination fee set by the NBCE. Failure to pass the Ethics and Boundaries examination after two attempts constitutes a violation of probation.

**RATIONALE:** NEW-Ethics course is now referred to as Ethics and Boundaries Examination (NBCE). The miscellaneous Ethics or Ethics and Boundaries courses were limited to quantity and quality of content. This course is specific and used as a tool to assess the understanding of ethics issues as they relate to chiropractic clinical practice and patients. The deadline for passing the examination is now indicated by either months or years.





### Education Course

Within \_\_\_\_ days of the effective date of this decision, and on an annual basis thereafter, Respondent shall submit to the Board for its prior approval, a program in \_\_\_\_ (e.g. specify course subject matter) an educational program or course to be designated by the Board, which shall be aimed at ~~correcting any areas of deficient practice or knowledge~~ which shall not be less than \_\_\_\_ hours per year, for each year of probation. \_\_\_\_ hours of the education may be obtained through distance learning. This program shall be in addition to the chiropractic continuing education requirements for re-licensure, and shall be obtained with all costs being paid by Respondent. Respondent shall provide written proof of attendance in such course or courses as are approved by the Board. ~~Probation shall be automatically extended for failure to complete the education as set out hereinabove.~~ **Failure to complete the annual \_\_\_\_ hours of education constitutes a violation of probation.**

**RATIONALE: Section enhanced to include distance learning.**

### Community Service

Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which Respondent shall provide volunteer services on a regular basis with a **non-profit** community or charitable facility or agency for at least \_\_\_\_ hours per month for the first \_\_\_\_ months/**years** of probation. Such community service does not necessarily include chiropractic service. Respondent shall ensure that the Board receives documentation and/or certification of community service hours by the facility or agency on a monthly/**quarterly** basis.

**Community service required by this condition shall be performed in the State of California. Community service performed prior to the effective date of this decision shall not be accepted in fulfillment of this condition.**

Failure to complete the community service as set out hereinabove is grounds for filing a petition to revoke probation.

**RATIONALE: Adding these comments is appropriate in those cases where the Respondent will need to rehabilitate from wrongdoing after actually or potentially harming the public, consumer or a patient. Also time frames to complete service can be set. Paragraph flows better with use additional words for emphasis.**

### Restricted Practice

Respondent's practice of chiropractic shall be restricted to [specify patient population and/or setting] for the first \_\_\_\_ years of probation. Within 30 days from the effective date of the decision, Respondent shall submit to the Board, for prior approval, a plan to implement this restriction. Respondent shall submit proof, satisfactory to the Board, of compliance with this term of probation.

NOTE: The restrictions shall be appropriate to the violation.

### **Third Party Presence - Sexual Transgressors-Chaperone**

During probation, Respondent shall have a third party **chaperone** present in the examination or treatment room while **consulting**, examining and/or treating (female/male/minor) patients. Respondent shall, within 30 days of the effective date of the decision, submit to the Board or its designee for its **prior** approval the name(s), **photo identification and contact information** of persons who will be the third party **chaperone**. ~~present and a plan describing the third party's duties.~~

Respondent shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain: 1.) patient name, address and telephone number; 2.) date of service; 3.) chaperone signature; 4.) patient gender; and 5.) patient signature. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying by the Board or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log of all patients requiring a third party chaperone, or to make the log available for immediate inspection, is a violation of probation.

The Respondent shall execute a release authorizing the third party(ies) **chaperone** present to divulge any information that the Board or its designee may request on a periodic basis during the probation **period** ~~monitoring.~~

~~NOTE: Sexual transgressors should be placed in a supervised environment.~~

**RATIONALE:** This condition continues to allow the Board to monitor Respondent by use of a third party chaperone in those cases involving sexual misconduct. Chaperone must be in the room during the patients' treatment, examination or consultation.

### **Notification to Patients**

Respondent shall notify all current and potential patients of the his/her probation requirements by providing a copy of, or posting a copy of the final decision and Order in this matter., ~~especially any term or condition of probation which will affect their treatment or the confidentiality of their records.~~ Such notification shall be signed by each patient prior to continuing or commencing treatment. Respondent shall submit, upon request by the Board, satisfactory evidence of compliance with this term of probation. ~~Terms of probation which require such notification include, but are not limited to, suspension of practice, supervised practice, and restricted practice.~~

**RATIONALE:** Similar to what is required by employee notice, we require posting or circulating copy or order to alert patients and we require signed patient copies of this notification upon request. .

### **Criminal Probation/Parole Reports**

Respondent shall provide a copy of the conditions of any criminal probation/parole to the Board, in writing, within 10 days of the issuance or modification of those conditions. Respondent shall provide the name of his or her probation/parole officer to the Board, in writing, within 10 days after that officer is designated or a replacement for that officer is designated. Respondent shall provide a copy of all criminal probation/parole reports to the Board within 10 days after Respondent receives a copy of such a report.

### **BILLING MONITOR**

Within sixty (60) days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of a ~~one or more persons~~ to act as a billing monitor. The proposed billing monitor(s) can be one of the following: ~~shall have been~~ 1.) a licensed chiropractor, **licensed** for at least five (5) years and ~~not have ever~~ **never** been subject to any disciplinary action by the Board or a **certified professional coder/ medical auditor**. All proposed billing monitors shall be independent, with no professional or personal relationship with Respondent, including a familial relationship with or be an employee, partner, or associate of Respondent. It is Respondent's responsibility to ensure their billing monitor has copies of the Accusation in this matter along with the Decision and Order for reference. Once the Board has approved a billing monitor, Respondent shall submit a plan or **scope of review** by which the billing monitor will provide monitoring of Respondent's billing practices. If at any time during the period of probation, the billing monitor quits or is otherwise unavailable to perform his or her monitoring duties, within fifteen (15) calendar days of the same, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more persons to be the billing monitor. The billing monitor shall submit written reports to the Board on a quarterly basis verifying that monitoring has taken place as required. It shall be Respondent's responsibility to ensure that the required reports are filed in a timely manner. Respondent shall give the monitor access to all of Respondent's chiropractic practice business records including financial and patient records. Monitoring shall consist of at least four (4) hours, per quarter, of review of Respondent's records. This review shall take place in Respondent's office and or place of employment. If the monitor prepares a quarterly report to the Board which finds substantial errors or omissions in, and/ or questionable billing practices, monitoring may be increased at the discretion of the Board and Respondent shall immediately comply therewith. All costs of monitoring shall be borne by the Respondent.

Option #1: Respondent shall be prohibited from unilaterally signing insurance and worker's compensation insurance claim documents. All insurance and workers' compensation insurance claim forms are to be co-signed by a licensed chiropractor approved by the Board.

**RATIONALE: This section is NEW. A billing monitor can be an appropriate or less costly alternative in lieu of CPA to review flow of billing systems after review of those systems, statements, redacted treatment records which substantiate billing charges for services. Recommended in cases involving billing incompetence, billing irregularities or insurance / worker's compensation insurance fraud. Billing monitors can be licensed doctors of chiropractic who have experience with efficient billing practice management and/or also professional medical coders who regularly monitor accuracies within a health practice's billing systems.**